

FEE IN LIEU OF PROPERTY TAX

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard W. Wheeler

Senate Sponsor: Dennis E. Stowell

LONG TITLE

General Description:

This bill amends the Interlocal Cooperation Act to provide payment of an annual fee in lieu of property taxes.

Highlighted Provisions:

This bill:

- requires certain public agencies to pay an annual fee in lieu of a property tax;
- provides a method of calculation to determine the amount of the annual fee;
- provides that certain public agencies have the same obligations, credits, rights, and protections as a project entity; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-302, as last amended by Chapter 21, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **11-13-302** is amended to read:

11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy

suppliers -- Method of calculating -- Collection -- Extent of tax lien.

(1) (a) Each project entity created under this chapter that owns a project and that sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution Article XIII, Section [2] 3, from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section to each taxing jurisdiction within which the project or any part of it is located.

(b) For purposes of this section, "annual fee" means the annual fee described in Subsection (1)(a) that is in lieu of ad valorem property tax.

(c) The requirement to pay an annual fee shall commence:

(i) with respect to each taxing jurisdiction that is a candidate receiving the benefit of impact alleviation payments under contracts or determination orders provided for in Sections 11-13-305 and 11-13-306, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the last generating unit, other than any generating unit providing additional project capacity, of the project occurs, or, in the case of any facilities providing additional project capacity, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the generating unit providing the additional project capacity occurs; and

(ii) with respect to any taxing jurisdiction other than a taxing jurisdiction described in Subsection (1)(c)(i), with the fiscal year of the taxing jurisdiction in which construction of the project commences, or, in the case of facilities providing additional project capacity, with the fiscal year of the taxing jurisdiction in which construction of those facilities commences.

(d) The requirement to pay an annual fee shall continue for the period of the useful life of the project or facilities.

(2) (a) The annual fees due a school district shall be as provided in Subsection (2)(b) because the ad valorem property tax imposed by a school district and authorized by the Legislature under Section 53A-17a-135 represents both:

(i) a levy mandated by the state for the state minimum school program under Section 53A-17a-135; and

(ii) local levies for capital outlay, maintenance, transportation, and other purposes under Sections 11-2-7, 53A-16-107, 53A-16-110, 53A-17a-126, 53A-17a-127, 53A-17a-133, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103.

(b) The annual fees due a school district shall be as follows:

(i) the project entity shall pay to the school district an annual fee for the state minimum school program at the rate imposed by the school district and authorized by the Legislature under Subsection 53A-17a-135(1); and

(ii) for all other local property tax levies authorized to be imposed by a school district, the project entity shall pay to the school district either:

(A) an annual fee; or

(B) impact alleviation payments under contracts or determination orders provided for in Sections 11-13-305 and 11-13-306.

(3) (a) An annual fee due a taxing jurisdiction for a particular year shall be calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the fee base or value determined in accordance with Subsection (4) for that year of the portion of the project located within the jurisdiction by the percentage of the project which is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers.

(b) As used in this section, "tax rate," when applied in respect to a school district, includes any assessment to be made by the school district under Subsection (2) or Section 63-51-6.

(c) There is to be credited against the annual fee due a taxing jurisdiction for each year, an amount equal to the debt service, if any, payable in that year by the project entity on bonds, the proceeds of which were used to provide public facilities and services for impact alleviation in the taxing jurisdiction in accordance with Sections 11-13-305 and 11-13-306.

(d) The tax rate for the taxing jurisdiction for that year shall be computed so as to:

(i) take into account the fee base or value of the percentage of the project located within the taxing jurisdiction determined in accordance with Subsection (4) used to produce the capacity, service, or other benefit sold to the supplier or suppliers; and

86 (ii) reflect any credit to be given in that year.

87 (4) (a) Except as otherwise provided in this section, the annual fees required by this
88 section shall be paid, collected, and distributed to the taxing jurisdiction as if:

89 (i) the annual fees were ad valorem property taxes; and

90 (ii) the project were assessed at the same rate and upon the same measure of value as
91 taxable property in the state.

92 (b) (i) Notwithstanding Subsection (4)(a), for purposes of an annual fee required by this
93 section, the fee base of a project may be determined in accordance with an agreement among:

94 (A) the project entity; and

95 (B) any county that:

96 (I) is due an annual fee from the project entity; and

97 (II) agrees to have the fee base of the project determined in accordance with the
98 agreement described in this Subsection (4).

99 (ii) The agreement described in Subsection (4)(b)(i):

100 (A) shall specify each year for which the fee base determined by the agreement shall be
101 used for purposes of an annual fee; and

102 (B) may not modify any provision of this chapter except the method by which the fee
103 base of a project is determined for purposes of an annual fee.

104 (iii) For purposes of an annual fee imposed by a taxing jurisdiction within a county
105 described in Subsection (4)(b)(i)(B), the fee base determined by the agreement described in
106 Subsection (4)(b)(i) shall be used for purposes of an annual fee imposed by that taxing
107 jurisdiction.

108 (iv) (A) If there is not agreement as to the fee base of a portion of a project for any
109 year, for purposes of an annual fee, the State Tax Commission shall determine the value of that
110 portion of the project for which there is not an agreement:

111 (I) for that year; and

112 (II) using the same measure of value as is used for taxable property in the state.

113 (B) The valuation required by Subsection (4)(b)(iv)(A) shall be made by the State Tax

Commission in accordance with rules made by the State Tax Commission.

(c) Payments of the annual fees shall be made from:

(i) the proceeds of bonds issued for the project; and

(ii) revenues derived by the project entity from the project.

(d) (i) The contracts of the project entity with the purchasers of the capacity, service, or other benefits of the project whose tangible property is not exempted by Utah Constitution Article XIII, Section [2] 3, from the payment of ad valorem property tax shall require each purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for, its share, determined in accordance with the terms of the contract, of these fees.

(ii) It is the responsibility of the project entity to enforce the obligations of the purchasers.

(5) (a) The responsibility of the project entity to make payment of the annual fees is limited to the extent that there is legally available to the project entity, from bond proceeds or revenues, monies to make these payments, and the obligation to make payments of the annual fees is not otherwise a general obligation or liability of the project entity.

(b) No tax lien may attach upon any property or money of the project entity by virtue of any failure to pay all or any part of an annual fee.

(c) The project entity or any purchaser may contest the validity of an annual fee to the same extent as if the payment was a payment of the ad valorem property tax itself.

(d) The payments of an annual fee shall be reduced to the extent that any contest is successful.

~~[(6) (a) Any public agency that is not a project entity and that owns an interest in facilities providing additional project capacity which, if its tangible property is not exempted by Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, uses any capacity, service, or other benefit from it or which sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, shall pay an annual fee with respect to its ownership interest, and shall have the obligations, credits,~~

rights, and protections set forth in Subsections (1), (2), (3), (4)(a), (4)(c), (4)(d), and (5) with respect to its ownership interest as though it were a project entity.]

[~~(b) The ownership interest of a public agency upon which an annual fee is payable is not subject to:~~]

~~[(i) ad valorem property taxes under Title 59, Chapter 2, Property Tax Act; or]~~

~~[(ii) privilege taxes under Title 59, Chapter 4, Privilege Tax.]~~

~~[(c) Each public agency and project entity that owns an interest in facilities providing additional project capacity:]~~

~~[(i) is subject to an annual fee only with respect to that ownership interest; and]~~

~~[(ii) is not subject to an annual fee with respect to any portion of the facilities providing additional project capacity that it does not own.]~~

(6) (a) The annual fee described in Subsection (1):

(i) shall be paid by a public agency that:

(A) is not a project entity; and

(B) owns an interest in a facility providing additional project capacity if the interest is otherwise exempt from taxation pursuant to Utah Constitution, Article XIII, Section 3; and

(ii) for a public agency described in Subsection (6)(a)(i), shall be calculated in accordance with Subsection (6)(b).

(b) The annual fee required under Subsection (6)(a) shall be an amount equal to the tax rate or rates of the applicable taxing jurisdiction multiplied by the product of the following:

(i) the fee base or value of the facility providing additional project capacity located within the jurisdiction;

(ii) the percentage of the ownership interest of the public agency in the facility; and

(iii) the portion, expressed as a percentage, of the public agency's ownership interest that is attributable to the capacity, service, or other benefit from the facility that is sold by the public agency to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution, Article XIII, Section 3, from the payment of ad valorem property tax.

(c) A public agency paying the annual fee pursuant to Subsection (6)(a) shall have the

170 obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect
171 to its ownership interest as though it were a project entity.